

BIGFORK LAND USE ADVISORY COMMITTEE
Approved Minutes Thursday, December 20, 2018
Bethany Lutheran Church – Downstairs

Chairwoman Susan Johnson called the meeting to order at 4:04 p.m.

Present: Committee members: Susan Johnson, Shelley Gonzales, Jerry Sorensen, Lou McGuire and Chany Ockert. Public: Eighteen members including a reporter.

The agenda was adopted (m/s, J. Sorensen/S. Gonzales) unanimous

Approval of draft minutes dated October 25, 2018 (m/s, J. Sorensen/S Gonzales) unanimous.

Administrator's report and announcements:

Sign-in sheet with e-mail address. Draft minutes and documents are posted on the County website: flathead.mt.gov/planning_zoning. Click on: [meeting information](#)

Gonzales stated that the CUP application from Lisa Batten had been postponed and Planning and Zoning would notify BLUAC if it is re-scheduled with the Board of Adjustment.

Public Comment:

Paul Mutascio commended BLUAC for its hard work.

Applications:

None

Old Business:

Continuing to look for a recording secretary.

New Business:

A. Committee appointments to open positions on the Committee.

There are two open positions vacated by Tim Kittle and Joyce Mitchell. Tim moved out of the area and Joyce is in Nevada during the winter and cannot attend meetings. BLUAC approved a By-laws change to allow for teleconferencing which would allow members not in attendance to participate in meetings, but it has yet to be approved by the County Commissioners.

Alex Olson volunteered to fill the position of Tim Kittle. A motion was made by McGuire and seconded by Gonzales to appoint Olson as a member until 5-31-2019, after which he would be required to file for election for the remaining term of the position to expire 5-31-2020. Motion passed unanimously. Olson joined the committee for the remainder of the meeting.

There were no volunteers to fill the Member-at Large position vacated by Joyce Mitchell. Gordon Graham asked for clarification if he could volunteer, however he lives on La Brant Road which is outside of the Bigfork Zoning District and he cannot serve on the committee.

B. Discussion on proposed amendment by County Commissioners to amend Land Use Advisory Committee By-Laws to eliminate Conditional Use Permit (CUP) reviews by all Land Use Advisory Committees.

Susan Johnson stated that BLUAC members have received several letters (via email) and comments about the impact of eliminating from the By-laws of the County's Land Use Advisory Committees (LUACs)

from review and recommendation of Conditional Use Permit (CUP) applications before they are voted on by the Board of Adjustment. She referenced the audio portion of the December 11, 2018, Commissioners' meeting when they tabled the BLUAC's By-law change to allow for teleconferencing and began a discussion on eliminating from all LUAC By-laws the review of CUPs prior to vote by the Board of Adjustment. Commissioner Krueger indicated that several years ago it was determined that the Lakeside LUAC did not include CUP review in their By-laws and their review of CUPs was terminated. Lakeside asked that they be allowed to review CUPs, but they were denied. There was a comment from one of the commissioners that none of the LUAC By-laws included the review of CUPs prior to vote by the Board of Adjustment. A Commissioner stated that the county attorney's office should review all LUAC By-laws for changes and consistency. Another Commissioner stated that there should be public input on the proposed change to all LUACs by the County. Johnson stated that this meeting should be considered the beginning of public comment on the topic and that she was pleased that so many people were in attendance, especially when so many in the community are gone during the winter months.

Q. Sorensen: When listing to the audio of the December 11th Commissioners' meeting, I did not hear a statement about public input. A. Gonzales: It was either Mitchell or Holmquist who made the statement regarding the need for public input and they are going to study whether to change the LUAC By-laws. I spoke with Holmquist and while she listed to my concerns on removing CUP review from the LUACs, she wanted to study this issue.

Q. Sorensen: When listening to the audio of the meeting, I thought they were referring that only BLUAC had the CUP review authority, not all LUACs. I called Mark Mussman and he stated that all LUACs have the authority to review CUPs, except for Lakeside. A. Gonzales: As I previously stated Lakeside's By-laws only allowed for zoning reviews and Commissioner Krueger terminated their review of CUPs and would not give them the authority to do so. (This information was provided by David Fetvite who was the chair of Lakeside LUAC at that time.) Gonzales further stated that she has received an email with all the LUAC By-laws and they have been forwarded to each BLUAC member. This give us the opportunity to study what the other LUAC By-laws look like.

Q. Johnson: I want to know how long the legal review process will take as it is holding up our By-law change to allow for teleconferencing.

Q. Sorensen: I want to know how any change to our By-laws will occur, unilaterally? When I talked to Mark Mussman, he was not sure how a change would be done.

Q. McGuire: There must be some statutory guidance for process to change By-laws? A. Sorensen: I doubt Montana statutes have such guidance as By-Laws are not included in zoning statutes.

Public Comment:

Paul Mutascio (President Community Foundation for a Better Bigfork): It seems that the topic of LUAC By-laws was not on the commissioner's agenda and that violates public meeting laws. I think the committee should interact with the County Attorney's office and the Planning office and be proactive and not wait for the Commissioners' response. This issue should go through a rigorous public hearing process. I do not want Bigfork to be short changed by the process. How many communities in the County will be impacted by this change? (Sorensen answered 10 or 11) We need to reach out to these communities and get a public groundswell going.

Craig Wagner (President of the Bigfork Steering Committee): I was on the Board of Adjustment and had to intervene often as board members were not following Robert's Rules of Order on procedure. I would recommend that BLUAC file a complaint with the U.S. Attorney's office for the Commissioners disenfranchising you.

Edd Blackler: I was a member of the Bigfork Steering Committee when BLUAC was established and approved by the County Commissioners and made a part of their By-laws. I do not understand why the Commissioners would not want BLUAC to be a liaison between the public and the Commissioners which

exists and includes CUPs that go before the Board of Adjustment. We went through a lot of trouble surveying Bigfork residents to learn what they wanted for the future. This is the basis for all the decisions that BLUAC must make. In a letter by Mayre Flowers, she itemizes the specifics of the By-laws that need to be looked at. She has been incredible in providing that kind of information. We need to hold their feet to the fire as we are doing our job.

Comment by member Gonzales: For the record, I reached out to Mayre Flowers as I had questions, one being, are LUAC By-laws public documents? I informed her what had happened to the Lakeside LUAC regarding the termination of their review of CUPs. Without BLUACs knowledge or authorization she crafted that letter and sent it out to multiple distribution lists. I just want it known how this letter came about without our knowledge.

Comment by Johnson: We are collecting all the information from many sources and I want to thank everyone who has responded.

Lance Morgan: I did not know there were 11 other LUACs. Are they as surprised as we are that the Commissioners want to do this? I cannot figure out what their motive is. BLUAC is an advisory committee without authority other than to speak for the community. So why don't they want BLUAC to speak for the community? I think that this is a terrible idea and I find doing this to the other LUACs is irresponsible as well. I think doing this to the other LUACs without notification speaks to the disenfranchisement as well.

Comment by member Ockert: We stumbled upon this. We were checking to see if the Commissioners had approved our By-law change request and we only found out about the issue of removing CUP review by LUACs when we listened to the audio of the 12-11-2019, Commissioners' meeting.

Lance Morgan: So, the Commissioners went about the process of amending the BLUAC By-laws without notifying anyone about it. A. Ockert: Yes.

Comment by member Sorensen: This thing came out of the blue. In listening to the audio of their meeting I did not get that this would include all LUACs, just BLUAC. In talking with Mark Mussman, he stated that most of the LUACs have the CUP review provision. Most LUACs cannot get a meeting quorum and BLUAC is the best in the valley. Mussman stated he does not support this change and was unsure what the process would be.

Comment by Ockert: Since this topic was not on the agenda, there was no way members of BLUAC or the community could be at the meeting for any comment.

Lance Morgan: Then this is another point that the County Attorney's office, the U.S. Attorney's office and everyone else should be notified of.

Comment by Johnson: It would have been nice if Krueger could have been here since he recommended the change and he said it was for consistency for all the LUACs.

Rebekah King (Director of the Bigfork Chamber of Commerce): It is important the BLUAC be in the process for reviewing CUPs as there have been so many instances out in the Echo Lake from the gun range, dog kennel and wedding venue, and it is unfortunate the Commissioners brought up the review of CUPs as a side note to the BLUAC By-law amendment request.

Denise Lang: I was involved with the 2005 BLUAC. I lived next door to a neighbor who operating a wedding venue in violation of R-1 zoning. A CUP to allow the venue was not recommended by BLUAC

for approval and had it gone to the Board of Adjustment it would likely have been approved. The continued operation of the wedding venue impacted the value and ability to sell our home. From a realtor's point of view, I sell property as a listing or buyer's agent and I need predictability for my clients when I tell them what the zoning and use is for that property. Being that Bigfork is an unincorporated area, the only predictability we have is zoning. Therefore, we must keep all reviews here at the BLUAC.

(an inaudible comment by someone who did not identify them self)

Lance Morgan: I had the 2013 to 2015 version of what Denise and John Lang went through in terms of a wedding business and it is inconceivable to me that county officials would want to prohibit people on the local level to voice their opinions on what should be allowed in their neighborhood and taking that voice away from them. And further, taking that voice away without any due process and not letting us know or any of the other 10 LUACs know what they are doing when the stakes are high for land values, noise, neighborliness is mind boggling. I do not know what they are doing, but they are not going to do it without a fight.

Robert Carette: I had a project before BLUAC for their review. The Planning and Zoning department explained the process. The process that goes through BLUAC gives you feedback and does create a delay, but the process going through BLUAC was fair and rewarding. Having the support of BLUAC provided value in the planning and the process. It is important what BLUAC does and I support the process.

Doug Averill: In 1992, there was a huge influx of people and the developers were running rampant and the county could not handle it. The county asked for local input to help the county with development and decisions. The first Bigfork Neighborhood Plan was developed, then a required update began in 2004 and was finalized in 2009. The Bigfork Neighborhood Plan is the gold standard. Be aggressive on defending the Plan and the process. This is ridiculous.

Paul Mutascio:

We need to be assertive on this. We do not want to be on defense, we need to be on offense on this. The committee needs to meet with the Planning Director to get the facts straight and put him on notice that we have a lot of history in Bigfork. Bigfork needs a united voice, especially at the Board of Adjustment meetings. Trying to limit our voice, I think, violates the Montana state constitution.

Committee Discussion:

Ockert: At our last meeting, planning staff said that things would change regarding CUPs as there had been externally provided training for the Commissioners, Board of Adjustment and Planning Board due to all of the lawsuits regarding their decisions. LUAC input on CUPs would have more weight as a result. My question is, did the Commissioners' comments relate to that litigation and that advisement?

Gonzales: I think we need to contact county attorney Tara Fugina. She provides training to all LUAC members. Likely she would be the person who has that information from the training for the Commissioners, Board of Adjustment and Planning Board.

Sorensen: I agree with Doug Averill and Paul Mutascio, we need to schedule a meeting with Mussman and the Commissioners. They need to explain to us why they are doing this, and the process they intend to go through and how the public will be involved. We need to be proactive, show we are responsible citizens and provide a public forum for discussions. The Board of Adjustment often rejects our recommendations. I know we are an advisory group but why does the County want to take the neighborhood out of the Neighborhood Plan?

C. Consider separate statement with vote to County Commissioners and County Attorney's Office regarding the elimination of CUP reviews by Land Use Advisory Committees.

Johnson: We will draft a letter and take all your input and send it to the appropriate people. I believe we are on the Commissioners' radar as we invited them to our meeting.

Doug Averill: He suggested that we take a vote of the attendees and the committee, so the recipients of the letter will know the percentage of the people who are in favor or against eliminating BLUACs review of CUPs.

Johnson motioned to take a poll of the people in attendance on whether BLUAC should or should not be eliminated from review of CUPs. Ockert seconded the motion. Sorensen suggested amending the motion to take a poll to determine public support for maintaining BLUACs current process of reviewing CUPs. Gonzales seconded the amended motion. Motion passed unanimously.

The vote was taken of all in attendance. There were 16 members of the public and 6 members of BLUAC in favor, no members of the public or BLUAC who were against, and there was one member of the public who abstained.

Sorensen stated that Commissioner Krueger's term ends 12-31-2018, and that we want to talk to the incoming Commissioner, Randy Brodehl.

Gordon Graham asked if Krueger represented Bigfork. There was a general discussion amongst the attendees regarding adequate notice, so all information can be disseminated to all the LUACs and that a meeting be scheduled with the Commissioners ASAP, so we can understand their position.

Johnson adjourned the meeting at 5 p.m.